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11 Attorneys for Defendant FEDEX GROUND PACKAGE SYSTEM, INC.

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13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
15 OAKLAND DIVISION

16 MICHELLE HINDS, an individual, and
17 TYRONE POWELL, an individual,

18 Plaintiffs,

19 vs.

20 FEDEX GROUND PACKAGE SYSTEM,
INC., a Delaware corporation; and BAY RIM
21 SERVICES, INC., a California corporation,

22 Defendants.

Case No. 4:18-cv-01431-JSW (AGT)

**JOINT RESPONSE TO COURT'S
PRELIMINARY INSTRUCTIONS**

Action Filed: March 5, 2018
FAC Filed: May 10, 2018
Trial: October 24, 2022

1 Plaintiffs and FedEx Ground jointly respond to the Court's Preliminary Instructions to
 2 provide the requested language concerning Bay Rim in the "Claims and Defenses" instruction
 3 and to request that the Court allow the jurors to ask questions of witnesses and accordingly give
 4 the instruction regarding juror questions. The parties will also submit a word copy of the
 5 instructions discussed below.

6 **I. CLAIMS AND DEFENSES**

7 In the Court's proposed preliminary instructions on "Claims and Defenses," the Court
 8 noted to "Add Bay Rim." Plaintiffs and FedEx Ground conferred and propose the following
 9 language:

10 *Bay Rim denies Plaintiffs' claims. Although you will hear testimony from Bay Rim's*
 11 *owner, Mr. Rupesh Parikh, Bay Rim has decided not to participate in other aspects of this*
 12 *trial.*

13 The Parties also suggest a correction to indicate Plaintiffs in plural in the first sentence.

14 Finally, Plaintiffs request now that their waiting time claim be added to the list of
 15 claims, and FedEx Ground does not object.

16 With these changes, the instruction would read as follows:

17 **Claims and Defenses**

18 To help you follow the evidence, I will give you a brief summary of the positions of the
 19 parties:

20 The Plaintiffs assert that their former employer, Bay Rim Services, Inc., failed to pay
 21 them overtime, failed to provide meal and rest breaks, failed to provide proper wage
 22 statements, and failed to pay all wages due on termination. Plaintiffs claim that FedEx Ground
 23 was their joint employer with Bay Rim. Plaintiffs have the burden of proving these claims.

24 Bay Rim denies Plaintiffs' claims. Although you will hear testimony from Bay Rim's
 25 owner, Mr. Rupesh Parikh, Bay Rim has decided not to participate in other aspects of this
 26 trial.

27 FedEx Ground denies Plaintiffs' claims and that it was Plaintiffs' employer. FedEx
 28 Ground also asserts that it did not have knowledge of Plaintiffs' claimed wage and hour

1 violations. Separately, FedEx Ground claims that it acted in good faith, precluding liability
 2 against it on several of Plaintiffs' claims. FedEx Ground has the burden of proving its good-
 3 faith defense.

4 **II. QUESTIONS TO WITNESSES BY JURORS**

5 Plaintiffs and FedEx Ground jointly submitted an instruction based on the Ninth Circuit
 6 Manual of Model Civil Jury Instructions, 1.19 on "Questions to Witnesses by Jurors." That
 7 instruction was not included in the Court's preliminary instructions. Both Plaintiffs and FedEx
 8 Ground would like the jurors to be permitted to ask questions of witnesses, using a procedure
 9 specified by the Court. Accordingly, Plaintiffs and FedEx Ground are submitting the model
 10 instruction again for the Court's consideration. It reads as follows:

11 **Questions to Witnesses by Jurors**

12 When attorneys have finished their examination of a witness, you may ask questions of
 13 the witness. [*Describe procedure to be used.*] If the rules of evidence do not permit a particular
 14 question, I will advise you. After your questions, if any, the attorneys may ask additional
 15 questions.

16 Also, if you are unable to hear a witness or a lawyer, please raise your hand and I will
 17 correct the situation.
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Respectfully submitted,

DATE: October 17, 2022

AIMAN-SMITH & MARCY

By: /s/ Joseph Clapp

Joseph Clapp

Attorney for Plaintiffs

MICHELLE HINDS & TYRONE POWELL

DATE: October 17, 2022

WHEELER TRIGG O'DONNELL LLP

By: /s/ Jessica G. Scott

Jessica G. Scott

Attorney for Defendant

FEDEX GROUND PACKAGE SYSTEM, INC.

ECF ATTESTATION

Pursuant to Civil L. R. 5-1(i) the filer attests that concurrence in the filing of this document has been obtained from each of the other signatories thereto.

Date: October 17, 2022

/s/ Jessica G. Scott